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OFFICE OF PETITIONS

In re Application of :
Crandall, Smallwood, and Hobbs : DECISION REFUSING STATUS
Application No. 10/817,181 : UNDER 37 CFR 1.47(a)
Filed: 2 April, 2004 :
Atty Docket No. 033859-008 :

This is in response to the petition filed under 37 CFR 1.47(a) on 18 January, 2005.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.

Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 2 April, 2004, without an executed oath or declaration. Accordingly, on 18 June, 2004, a Notice to File Missing Parts of Nonprovisional Application was mailed, requiring an executed oath or declaration and a surcharge for its late filing. A two (2)-month period for reply was set.

In response, on 18 January, 2005, petitioners filed a five (5) month extension of time accompanied by the late-filing surcharge, the present petition, and a declaration naming Eral F. Crandall, Robert C. Smallwood, Sr., and Christopher M. Hobbs as joint inventors and signed by joint inventors Crandall and Smallwood on behalf of themselves and non-signing joint inventor Hobbs.

Petitioners assert that a copy the declaration was sent to the last known address of joint inventor Hobbs. Petitioners further state that attempts to locate Hobbs by telephone and email, and attempts to find a more recent address for non-signing inventor Hobbs had been unsuccessful.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks items (1) and (5).

In regards to item (1), petitioners have not shown that joint inventor Hobbs was sent or presented with a copy of the application as filed (specification, including claims, drawings, if any, and the declaration).¹

Petitioners may show proof that a copy of the application was sent or given to the non-signing inventors for review by providing a copy of the cover letter transmitting the application papers (specification, including claims, drawings, if any, and the declaration) to the non-signing inventors or details given in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

If the application is returned as undeliverable, petitioners should present a copy of the envelope showing that the application sent to the last known address of the non-signing inventors was returned as undeliverable by the post office.

Likewise, before a *bona fide* refusal to sign the declaration can be alleged, petitioners must show that a copy of the application was sent or given to the non-signing inventor. If the inventor refuses in writing, petitioners must submit a copy of that

¹MPEP 409.03(d).

written refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of fact.

With regard to Hobbs' last known address, the last known address is that address at which the inventor customarily receives mail.² Ordinarily, the last known address will be the last known residence of the non-signing inventor.³ If a different last known address is determined for one or more of the joint inventors, that address should be provided with any renewed petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: Customer Service Window
 Mail Stop Petition
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The petition fee of \$200.00 will be charged to counsel's deposit account, No. 02-4800 as authorized in the present petition.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

²See MPEP 605.03.

³MPEP 409.03(e).